

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL L. McGEE,

Plaintiff,

v.

STEVEN SHAW, Property Officer, and
JOHN DOE,

Defendants.

ORDER

09-cv-466-bbc

Pursuant to this court's preliminary pretrial conference order, dkt. #5, plaintiff Michael McGee has filed an amended complaint, dkt. #6, naming Casey Northcott and Barbara Lewis as the John Doe defendants. Defendants Steven Shaw and John Doe have moved to strike the amended complaint on the ground that plaintiff also improperly added factual allegations and claims for relief. Dkt. #7. As defendants note, in the pretrial conference order, this court instructed plaintiff that he should "not make any other changes to his complaint without first asking for and receiving permission from the court." Dkt. #5 at 5.

Plaintiff did not file a motion for leave to amend his complaint under Fed. R. Civ. P.

15(a). For the sake of efficiency, I will construe his proposed amended complaint as including such a motion. Whether to grant leave to amend a pleading pursuant to Rule 15(a) is within the discretion of the trial court, Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995). The rule provides that leave “shall be freely given when justice so requires,” Fed. R. Civ. P. 15(a), but a request to amend may be denied on several grounds, including undue delay, undue prejudice to the party opposing the motion or futility of the amendment. Sound of Music v. Minnesota Mining and Manufacturing Co., 477 F.3d 910, 922-23 (7th Cir. 2007); Butts v. Aurora Health Care, Inc., 387 F.3d 921, 925 (7th Cir. 2004). In this case, I find no reason to deny plaintiff’s request to amend.

Plaintiff amended his complaint within two weeks after entry of the pretrial conference order, well within the October 30, 2009 deadline set by the court for identifying the Doe defendants, and only a little more than a month after discovery commenced. Defendants take issue with the fact that plaintiff has added new factual allegations and claims for monetary relief (\$250,000 each for defendants Lewis and Northcott). However, these additions all relate to the two newly-identified defendants and provide more specific details about incidents of harassment that plaintiff referred to in the original complaint. Although plaintiff alleges several more examples of harassment and more reasons why he believes the harassment occurred, the nature of his claims has not changed. Therefore, it is unlikely that defendants will suffer undue prejudice.

Plaintiff's request for leave to amend will be granted. The proposed amended complaint will become the operative pleading in this case.

ORDER

IT IS ORDERED that:

1. Plaintiff Michael McGee's proposed amended complaint, dkt. #6, which I have construed as stating a motion for leave to amend the complaint, is GRANTED.
2. The amended complaint is accepted as the operative pleading in this case.
3. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's amended complaint and this order are being sent today to the Attorney General for service on the new state defendants. The assistant attorney general must report to the court whether she will accept service of the amended complaint on behalf of some or all of the new defendants. If she chooses not to accept service, then she must provide to the court, ex parte and under seal, the known addresses of the new defendants so that the Marshals Service may serve them with the amended complaint. Defendants have

40 days from the date of receipt of the Notice of Electronic Filing of the order stating that the plaintiff can proceed against the defendants in which to answer the complaint.

Entered this 29th day of September, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge